

Three-Year Landscaping Financial Guarantee – Maintenance Bond (Ministerial)

Permit # / Project Name: BLD09-01229 / LND11-00013

Date of Inspection

Date of Installation Acceptance

Three-Year Expiration Date

1. **Compliance with LDC Coverage Requirements** – LDC landscaping criteria are reviewed by the landscape designer and incorporated into the landscape plans, which are to be submitted with the building permit application. Note: A standard of special note is that the choice of plant species, initial size, and spacing needs to achieve 90% plant coverage in 3 years (LDC Section 4.2.20.a.3).
2. **Landscape Plan Approval** - City approval of Landscape and Irrigation Plans is required. Associate Planner assures that the plans comply with applicable Land Development Code provisions. A copy of the approved plans is stamped approved and kept with the Building Permit plans, and an approved stamped copy is provided for the applicant.
3. **Landscape Installation Bid** - The applicant will need to obtain City approval of the actual Landscape and Irrigation Installation Bid obtained from a certified landscape contractor and/or licensed landscape architect. The bid provided will be a line item bid so cost can be verified for use in bonding for installation and/or maintenance. The bid shall include cost of plant materials, sprinklers, soil, etc. with labor identified separately from material cost. Ground cover, irrigation, and bark can be estimated in cost per square foot. Drainage solutions for hydric soils, hillside development, etc. are required.
4. **Landscape Installation Acceptance** - The developer will request a landscape & irrigation inspection once installation is complete, by following the City's inspection request process. City staff will meet on site with the applicant and landscape contractor to inspect the installation. Sprinklers will be activated and, if needed, notes are made about irrigation or landscaping items that will need to be addressed prior to acceptance. Once the project complies with the Conditions of Approval and Land Development Code provisions and plants are found to be healthy and capable of meeting the 90% standard, an inspection approval form is delivered to the applicant. Following receipt of this form, the City can authorize initiation of the 3 year maintenance bond (see below).
5. **Landscape Maintenance Bond** - Prior to Final Acceptance, a 3 yr financial guarantee is required (LDC Section 4.2.20.a.3). For stormwater systems and water quality facilities, a maintenance plan is required regardless of guarantee.

PERFORMANCE STANDARD - Landscape areas will have 90% plant coverage at the end of the 3 year maintenance period. If this coverage standard has not been met, then larger and more frequent plantings may be required or poor drainage and/or irrigations situations resolved in order to help achieve the standard. In addition, it should be noted that the developer shall be responsible for all improvements or other actions that may be needed during the 3 year period to assure the landscaping is healthy during this time frame.

6. **Landscape Bonds (Installation and Maintenance)**
 - a. **City Staff Calculates Bond Amounts** - Prior to bond submittal, the City will calculate the amount of the bond and inform the applicant of this amount. The City's calculations will be as follows:

MAINTENANCE BOND =	Approved Landscape Installation Bid	\$ 14,475.00
	50% Bid Amount	\$ 7237.50
	Admin. (add 20% of 50% Bid Amount	\$ 1447.50
	Total Bond Amount	\$ 9000.00

- b. **Submitting Bond in City Format** - Applicant (or designee) submits bond documents to the Development Services Division for City Attorney signature using the bond template provided by the City. Landscape bonds are required prior to issuance of the Certificate of Occupancy, so it is prudent to plan adequate time to complete the above process.
7. **Release of Financial Guarantee** – One month prior to the Three-Year Expiration Date noted above, the Associate Planner shall submit, in writing to the applicant, a request for a Three-Year Status Report. The applicant is required to submit the report, prepared by a licensed arborist or licensed landscape contractor, that verifies that the 90% ground coverage rule has been achieved, either by successful plantings or by the installation of replacement plantings. Once this report has been submitted and approved by the Associate Planner, the financial guarantee can be released.

Attachments: Inspection Forms, Bond, Bid Materials

LANDSCAPE INSTALLATION BOND

BOND NO. 105669881

KNOW ALL PEOPLE BY THESE PRESENTS that we LCG PENCE CONSTRUCTION, LLC, as Principal, and TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, a corporation organized and existing under the Laws of the State of Oregon, Surety are held and firmly bound unto the City of Corvallis, Oregon, in the sum of --NINE THOUSAND AND 00/100-- Dollars (\$ 9,000.00) for the payment of which, well and truly to be made, the executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

Pursuant to Building Permit Case # BLD09-01229, this Bond is being established to cover the costs of replacing dead, dying, or diseased plants, repair or modification of irrigation and drainage and City of Corvallis administration costs (estimated at 20% of project costs) in order to comply with the approved landscape plan and applicable City standards.

The project name is BLD09-01229 / LND11-00013 : PHI KAPPA PSI.

WHEREAS, application was made to the obligee for approval of a building permit and was approved under the regulations of the City of Corvallis, and one of the conditions of this approval, pursuant to Building Permit Case # BLD09-01229, Condition # 10, is that a maintenance bond be filed with the Development Services Division, guaranteeing the maintenance of landscaping according to the landscape plan, Attachment A, as approved by the Development Services Division, which consists of a plan for the installation.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH that if the Principal shall maintain and remedy the work according to the plan in Attachment A for a period of two years following approval of the landscape installation, and the plants shall provide 90 percent ground coverage, then this obligation shall be void; otherwise it may be used, as necessary, in making improvements and/or repairs as required to meet the landscaping performance requirements outlined in Sections 4.2.20.a.3 of the Corvallis Land Development Code and the approved plans.

While the maintenance guarantee is three years, the term of this bond is for the period commencing 09/07/2011 and expiring on 09/07/2013, unless released by the Obligee prior thereto. However, the term of this bond may be renewed for an additional one-year period by the issuance of a Continuation Certificate by the Surety. Neither nonrenewal by the Surety nor failure of the Principal to provide the Obligee with a replacement bond shall constitute default under this bond.

To release this guarantee at the end of the three-year period, the developer shall provide a report to Development Services, prepared by a licensed arborist or licensed landscape contractor and shall verify that 90 percent ground coverage has been achieved, either by successful plantings or by the installation of replacement plantings. The City of Corvallis shall approve the report prior to release of the guarantee.

WITNESS our hands and seals this 7TH day of SEPTEMBER, 2011.

LCG PENCE CONSTRUCTION, LLC

Principal

By: 

TRAVELERS CASUALTY AND SURETY
COMPANY OF AMERICA

Surety

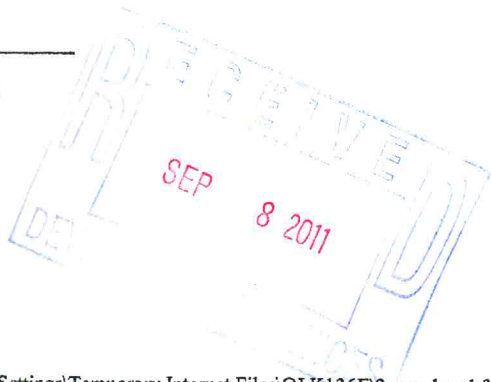
By: 

TY MOFFETT Attorney-In-Fact

Approved As to Form:

Corvallis City Attorney

62210-60919
BLD09-01229





POWER OF ATTORNEY

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company

Attorney-In Fact No. 218303

Certificate No. 004167200

KNOW ALL MEN BY THESE PRESENTS: That St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company and St. Paul Mercury Insurance Company are corporations duly organized under the laws of the State of Minnesota, that Farmington Casualty Company, Travelers Casualty and Surety Company, and Travelers Casualty and Surety Company of America are corporations duly organized under the laws of the State of Connecticut, that United States Fidelity and Guaranty Company is a corporation duly organized under the laws of the State of Maryland, that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Underwriters, Inc., is a corporation duly organized under the laws of the State of Wisconsin (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint

A.G. Sadowski, Derek A. Sadowski, Kathleen M. Sadowski, and Ty Moffett

of the City of Salem, State of Oregon, their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 15th day of April, 2011.

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company



State of Connecticut
City of Hartford ss.

By: _____

George W. Thompson
George W. Thompson, Senior Vice President

On this the 15th day of April, 2011, before me personally appeared George W. Thompson, who acknowledged himself to be the Senior Vice President of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal.
My Commission expires the 30th day of June, 2011.



Marie C. Tetreault
Marie C. Tetreault, Notary Public

Date 1/19/11

Client Contact Information Name LCG Pence Address 2720 Corbett Ave City Portland State OR Zip Code 97201 Tel (503) 252-3802 Fax (503) 256-3684		Client Billing Information Name LCG Pence Address PO Box 4109 City Salem State OR Zip Code 97302 Tel (503) 399-7223 Fax (503) 585-7477	
Work Site Contact Information Name Ruchi Yadav Phi Kappa Address 140 NW 13th St City Corvallis State OR Zip Code 97330 Tel Fax		E-mail <u>ruchi.yadav@lcpence.com</u> Start Date (est.) <u>Jan 4, 2010</u> Completion Date (est.) <u>Jan 16, 2010</u> Bid Expiration Date <u>Nov 30, 2009</u>	

Landscape Contractors Board • 2111 Front St. NE, Suite 2-101 • Salem, OR 97301 • Phone 503-378-5909 • Fax 503-378-5950

- The purpose of this Landscape Agreement (the "Agreement") is to set forth the terms and conditions under which Green Acres Landscape, Inc. (the "Contractor") will provide landscape service for the client named above (the "Client").
- Contractor agrees to perform the following services as outlined in the section Landscape Scope of Work (the "Service").
- Fee for Service (the "Fee"). **\$ 14,475.00**
- Contractor will furnish labor, equipment and materials necessary to perform Service.
- Contractor may, at Contractor's sole discretion, provide Client requested material and/or additional man-hours for Client requested special services that are not expressly included in Service or this Agreement; and, Client will be charged for and will reimburse Contractor for all Client requested material and additional man-hour costs spent on special services that have not been expressly included in Service or this Agreement.
- Client agrees to promptly notify Contractor in writing of any concern or dissatisfaction regarding Service.
- Client shall pay Contractor a non-refundable fee of 1/2 the Fee upon start of service, pay draws on Fee as work is completed, and pay the remaining amount of Fee and any additional fees upon completion of Service, as per this Agreement. Contractor will bill Client and Client shall make payment within ten days of billing date. Client agrees late payment fees will be assessed as per the following schedule:
 - 5 days past due - \$25.00 late fee
 - 10 days past due - \$50.00 late fee
 - 15 days past due - \$100.00 late fee; and, Service is suspended until the account is paid in full
 - 30 days past due - \$200.00 late fee; and, account is forwarded to collections. Client is responsible for all fees associated with collection; which may include, but are not limited to, past due fees, collection agency fees, court and/or any attorney fees.
- This Agreement shall commence on or about the start date above and shall continue in full force and effect thereafter until the completion of Service.
- Service does include a Limited Warranty as described in the "Green Acres Landscape, Inc. Limited Warranty."
- All materials need to be dumped on Client's property and Contractor assumes no responsibility of damaged concrete, per Erosion Control Regulations.
- Contractor guarantees that it will perform Service in a workmanlike manner. Should Client's plantings or property be damaged by any direct failure of Contractor to fulfill its obligation under this Agreement, Contractor shall repair or replace such damaged plantings or property. Client's right to repair and replacement are the exclusive remedies. Contractor shall not be liable for damages, direct or indirect, whether ordinary, incidental or consequential, other than as expressly set forth herein.
- Contractor shall not be liable for any damages, direct or indirect, whether ordinary, incidental or consequential, due to acts of Client, acts of third-party suppliers or agents, or acts of God or Nature.

Rich ^{cell} 503-871-7324 (owner)

Green Acres Landscape, Inc. Date Client Date

Date 1/19/11

13. Client shall indemnify and hold harmless, Contractor, its agents and employees from and against any and all claims, damages, losses, costs, expenses or liabilities, including attorney's fees and the costs and expense of any legal action, for noise pollution, invasion of a neighbor's privacy, infringement of a neighbor's rights, libel, slander, invasion of privacy, violations of any CC&R's, violations of any local, state or federal law, improper trade and business practices, or any other wrongful conduct, resulting from Service or any product or service, provided to Client.

14. In the event Client defaults on the terms of this Agreement, Contractor shall be entitled to full reimbursement from Client for all resulting attorney's fees, court fees, and collection fees and any other fee or expense incurred by Contractor or its agents to enforce this Agreement.

15. This Agreement shall be governed by the laws of the State of Oregon, and they shall control the interpretation, validity and enforcement of this Agreement without resort to its conflicts of law provisions. Both Contractor and Client agree that any dispute or controversy between the parties shall be heard by a panel of three arbitrators in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The panel shall have the right to award any relief, which it deems proper, which award shall be final and binding. However, any action or injunctive relief shall not be subject to arbitration, but rather, shall be initiated by the Courts of Marion County, Oregon; and the parties expressly consent to the jurisdiction and venue of said courts.

Landscape Scope of Work - description of work to be completed by Green Acres Landscape Inc.

After GC has set final grade we will amend soil with (30 yard mulch and cultivate in for turf and plants. Provide design on CAD to submit to City of Corvallis for automated Rainbird irrigation with (4) zones, install all parts and labor. Install spedced trees, shrubs, sod turf and bark dust. Clean up.

Irrigation and landscape can be LEED certified.

Client Objective

Estimated quantity and cost of materials and labor required, and to be furnished by Green Acres Landscape, to complete project as described above:

Preparation Work / Clean-up / Other or Non-Itemized Project Costs

Irrigation

Design and submit to Urban Planning with City of Corvallis irrigation plan on CAD, get approved and install all parts and labor with as built.

\$ 3,845.00

Fill and Grading

Install (30) cubic yard soil and mulch, till and grade for plants and turf.

\$ 1,430.00

Stone Work, Boulders and/or Rock Walls

Green Acres Landscape, Inc.

Date

Client

Date

Landscape Agreement (continued) - Page 3 of 4

Date 1/19/11



Flatwork, Patios, Pavers, Flagstone and Brick

Retaining Walls, Manor, Corner and Tegula Stone, and Rock

Trees, Shrubs and Bedding Plants

Install (3) 2.5"-3" caliper trees, (22) three gallon, (172) two gallon shrubs, (57) two gallon Juniper GC, (554) one gallon Kinnikinnick GC and (44) one gallon Day lilly.

\$ 7,940.00

Water Feature

Lighting

Barkdust

Install (14) cubic yards of new fir bark dust and weed preventive.

5

\$ 710.00

Turf

Install (950) sq' sod turf.

\$ 550.00

Decks and Fences

Fee for Service \$ 14,475.00

Green Acres Landscape, Inc.

Date

Client

Date

Date 1/19/11

Green Acres Landscape, Inc. Limited Warranty

This Green Acres Landscape, Inc. Limited Warranty covers Product or Service defects (part or design failure; lawn, plant & tree disease or non-survival) in Green Acres Landscape, Inc. installed: (a) lawns for a period of thirty days from the date of installation; (b) plants and trees for a period of thirty days from the date of installation; (c) hardscape construction items for a period of ninety days from the date of installation; (d) drainage (that Green Acres Landscape, Inc. altered or changed the final grade, and only drainage at the landscape ground level) for a period of ninety days from the date of installation; and, (e) irrigation systems workmanship for a period of one year from the date of installation, irrigation systems parts for a period of thirty days from the date of installation, and parts may or may not also be subject to a manufacturer's warranty which is not related to this Limited Warranty.

Lawns - disease and non-survival

A lawn that is diseased or does not survive within thirty days from the installation date shall be repaired or replaced with a same or similar lawn, at Green Acres Landscape, Inc.'s sole discretion, based upon labor and item availability, at no charge to the client. Green Acres Landscape, Inc.s reserves the right not to replace or repair a lawn, if based upon the sole discretion and determination of Green Acres Landscape, Inc., the cause of the lawn disease or non-survival is a result of extreme weather conditions, improper watering, negligence of others, any circumstance unrelated to or not directly caused by Green Acres Landscape, Inc., an act of God.

Plants and Trees - disease and non-survival

A plant or tree that is diseased or does not survive within thirty days from the installation date shall be repaired or replaced with a same or similar item, at Green Acres Landscape, Inc.'s sole discretion, based upon labor and item availability, at no charge to the client. Green Acres Landscape, Inc.s reserves the right not to replace or repair a plant or tree, if based upon the sole discretion and determination of Green Acres Landscape, Inc., the cause of the plant or tree disease or non-survival is a result of extreme weather conditions, improper watering, negligence of others, any circumstance unrelated to or not directly caused by Green Acres Landscape, Inc., an act of God.

Hardscapes - item failure

A hardscape construction item that fails due to design or malfunction (not abuse) within ninety days from the installation date shall be repaired or replaced with a same or similar item, at Green Acres Landscape, Inc.'s sole discretion, based upon labor and item availability, at no charge to the client. Green Acres Landscape, Inc.s reserves the right not to replace or repair a hardscape construction item that fails, if based upon the sole discretion and determination of Green Acres Landscape, Inc., the cause of the failure is a result of extreme weather conditions, negligence of others, any circumstance unrelated to or not directly caused by Green Acres Landscape, Inc., an act of God.

Drainage - failure

Drainage (that Green Acres Landscape altered or changed the final grade, and only drainage at the landscape ground level) that fails within ninety days from the installation date shall be repaired or replaced with a same or similar item, at Green Acres Landscape, Inc.'s sole discretion, based upon labor and item availability, at no charge to the client. Green Acres Landscape, Inc.s reserves the right not to replace or repair drainage that fails, if based upon the sole discretion and determination of Green Acres Landscape, Inc., the cause of the failure is a result of extreme weather conditions, improper watering, negligence of others, any circumstance unrelated to or not directly caused by Green Acres Landscape, Inc., an act of God.

The following are NOT covered by this limited warranty: (a) any drainage issue or failure due, directly or indirectly, to the ground below the landscape level; (b) any drainage issue or failure due, directly or indirectly, to the ground above the landscape level; and, (c) any drainage issue or failure that is not directly caused by Green Acres Landscape, Inc.

Irrigation Systems - workmanship and part failure or leak

A pump, controller, valve, wire, pipe, fitting, sprinkler head or other part that fails or leaks due to incorrect workmanship (not part malfunction or pipe breaks) within one year from the installation date or a part malfunction within thirty days from the installation date shall be repaired or replaced with a same or similar item, at Green Acres Landscape, Inc.'s sole discretion, based upon labor and item availability, at no charge to the client. Green Acres Landscape, Inc. reserves the right not to replace or repair a pump, controller, valve, wire, pipe, fitting, sprinkler head or other part that fails or leaks, if based upon the sole discretion and determination of Green Acres Landscape, Inc., the cause of the failure or leak is a result of extreme weather conditions, negligence of others, any circumstance unrelated to or not directly caused by Green Acres Landscape, Inc., with the exception of a part failure within thirty days of installation as described herein, or an act of God. Parts may or may not also be subject to a manufacturer's warranty which is not related to this Limited Warranty.

The following are NOT covered by this limited warranty: (a) re-setting controller; (b) moving or adjusting heads after project completion; and, (c) adding additional sprinkler heads after project completion.

In no event shall Green Acres Landscape, Inc. be liable, whether in contract or tort (including negligence) for damages in excess of the purchase price of the Product or Service, or for any indirect, incidental, special or consequential damages of any kind, or loss of revenue or profits, or loss of business, or loss of use, or other financial or non-financial loss arising out of or in connection with the ability or inability to fully realize, enjoy or use the Product or Service, to the full extent these damages may be disclaimed by law.

This Limited Warranty shall be governed by the laws of the State of Oregon, and they shall control the interpretation, validity and enforcement of this Limited Warranty without resort to its conflicts of law provisions. Both Green Acres Landscape, Inc and Client agree that any dispute or controversy between the parties shall be heard by a panel of three arbitrators in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The panel shall have the right to award any relief, which it deems proper, which award shall be final and binding. However, any action or injunctive relief shall not be subject to arbitration, but rather, shall be initiated by the Courts of Marion County, Oregon; and the parties expressly consent to the jurisdiction and venue of said courts.

Green Acres Landscape, Inc.

Date

Client

Date